IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 177 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX
Versus
MANEKCHOWK & AHMEDABAD MFG CO LTD

Appearance:
1. INCOME TAX REFERENCE No. 177 of 1991
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 28/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of revenue, the following questions have been referred for our opinion in respect of the assessment year 1979-80:-

"1. Whether, on the facts and in the circumstances of the case, the sale proceeds from goods sold by the assessee should be brought to tax under the head "income from other sources" or under the head "income from business" when the assessee company is under liquidation and therefore ceased to carry on the business activity?

2. Whether, the finding of the Appellate Tribunal that on account of liquidation of the assessee company, the activity of business could not be said to have been stopped and hence the sale proceeds subject to deduction of expenses were required to be brought to tax under the head "Profits, business or gains" and not under the head "income from other sources"?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that estimated value at 20% of the sale proceeds of the old stock on hand sold for a sum of Rs.1,60,000/- during the accounting period in question was required to be allowed as a deduction while computing the income of the assessee?

4. Whether, the Appellate Tribunal has been right in law in directing the I.T.O. to allow set off of loss and unabsorbed depreciation as may be determined in the earlier years since the income of the assessee for sale of old sock was liable to be taxed under the head "income from business".

5. Whether, the Tribunal has been right in accepting the claim of the assessee that interest u/s. 217 is not leviable?"

2. The assessee is a company under winding up. The assessee sold certain goods during the year in question for Rs.1,60,000/- The assessee claimed that the entire sale proceeds should not be subjected to tax but the cost of the goods should be allowed as a deduction from the sale proceeds. The assessee also contended that the sale proceeds from goods sold by the assessee should be brought to tax under the head "income from business". The assessee claimed carry forward on depreciation/loss of the earlier years. The ITO rejected all the contentions of the assessee and held that the income from sale of old stock was chargeable under the head "income from other sources". As a consequence thereof the claim for deduction of loss/unabsorbed depreciation was not tenable. The Commissioner (Appeals) confirmed the view taken by the ITO.

In the assessee's appeal the Tribunal held that the income from sale of old stock should be brought to tax under the head of "business" income and, therefore, the assessee was entitled to allowance of set off of loss and unabsorbed depreciation. The Tribunal also granted the allowance as the assessee restricted its claim of deduction of cost for goods sold to estimated value at 20% of the sale proceeds.

3. We have heard Mr. Manish Bhatt, learned standing counsel for the revenue. Though served, none appears on behalf of the respondent- assessee.

4. At the hearing of this reference today, our attention is drawn to the decision of this Court in Anant Mills Ltd. v. CIT (1994) 206 ITR 582 wherein this Court took the view that where there is sale of goods after closure of business, it has to be decided as to whether the transaction was in the course of regular business or trading activity of the assessee. If the answer to the question is in the affirmative, it can be said that the transaction was a business or trading transaction. In that case the textile mill had stopped its manufacturing activity with effect from 1.10.1966. The manufactured goods was disposed of by the sale in question and therefore the sales in question were in the nature of realization sales effected solely with a view to realize the price of stock in trade with a view to facilitate the process of winding up of the company.

Following the aforesaid decision and on the facts and in he circumstances of this case, we are of the view that the sale proceeds from the goods sold by the

assessee company should be brought to tax under the head "income from other sources" as the assessee is under liquidation and had ceased to carry on the business activity. We accordingly answer question Nos.1 and 2 in the affirmative i.e.,in favour of the revenue and against the assessee.

5. So far as question No.3 is concerned, it appears that the Tribunal has given a finding of fact. The learned standing counsel for the revenue submitted that such a finding is not warranted in absence of any material on record to justify the assessee' s claim that 20% of the sale proceeds should be allowed as deduction while computing the income of the assessee. Apart from the fact that the finding given by the Tribunal is a finding of fact in so far as the percentage of the sale proceeds is taken as cost of the goods, we may also note the concession made by the department's representative before the Tribunal that the value of the opening stock is exigible to deduction for the accounting year. We accordingly answer question No.3 in the affirmative, i.e., in favour of the assessee and against the revenue.

6. Coming to question No.4, the controversy raised therein is already concluded by this Court in Anant Mills's case (supra). It has been held in that case that unabsorbed depreciation should be allowed to be carried forward and set-off against income under the head "other sources" of a subsequent year notwithstanding the fact that the business in respect of which it arose ceased to exist in the year of such set-off. Applying the ratio of the aforesaid decision to the facts of the present case, we answer question No.4 in the affirmative, i.e., in favour of the assessee and against the revenue.

7. Coming to last question, the same is consequential question which would have been required to be decided if question No.4 was answered against the assessee and in favour of the revenue. Since question No.4 is answered against the revenue and in favour of the assessee, question No.5 is answered accordingly in the affirmative, i.e., in favour of the assessee and against the revenue.

Ther reference accordingly stands disposed of.

(M.S.Shah, J.)

(A.M. Kapadia, J.)

(karan)